

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN GABRIEL VALLEY WATER COMPANY (U337W) for Authority to Increase Rates Charged for Water Service in its Fontana Water Company Division to Increase Revenues by \$11,573,200 or 39.1% in 2003, \$3,078,400 or 7.3% in 2004, \$3,078,400 or 6.8% in 2005, and \$3,079,900 or 6.4% in 2006, and

A.02-11-044

In the Matter of the Application of San Gabriel Valley Water Company (U337W) for Authority to Increase Rates Charged for Water Service in its Fontana Water Company Division By \$5,662,900 or 13.1% in July 2006, \$3,072,500 or 6.3% in July 2007, and \$2,196,000 or 4.2% in July 2008.

A.05-08-021

PROTEST OF THE OFFICE OF RATEPAYER ADVOCATES

Pursuant to Rules 6(a)(2) and 44.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Office of Ratepayer Advocates ("ORA") files this Protest to San Gabriel Valley Water Company's ("San Gabriel") request for an increase in rates charged for water service in its Fontana Water Company Division ("Fontana Division"). On August 25, 2005, the Commission issued Decision ("D.") 05-08-041 granting a limited rehearing of D.04-07-034, the decision on San

Gabriel's last general rate case ("GRC") for the Fontana Division. Because San Gabriel's current GRC application is based on D.04-07-034 which is now subject to rehearing, San Gabriel's application is no longer based on valid information. Before the Commission can consider San Gabriel's most recent application, the Commission must first issue a decision on the rehearing of D.04-07-034. Once that decision is issued, the Commission should require San Gabriel to file a new proposed application ("PA") based upon the outcome of the rehearing.

I. REHEARING DECISION

On August 25, 2005, the Commission issued D.05-08-041, modifying and granting a limited rehearing of D.04-07-034, the Commission's decision on San Gabriel's last general rate case application for the Fontana Division. Decision 05-08-041 grants a limited rehearing on: 1) whether San Gabriel met its burden of proof regarding its request for a rate increase in its last rate case application; 2) whether San Gabriel's proposed construction projects were needed, reasonable, and justified; 3) whether there was record evidence supporting a finding that \$2.6 million in proceeds from the County of San Bernardino were invested in F-10 Plant; and 4) whether there were circumstances warranting San Gabriel's deviation from Standard Practice U-16 concerning working cash. (D.05-08-044, Ordering Paragraph ("OP") 2.) The Commission consolidated the rehearing issues into this proceeding. (*Id.* at OP 3.)

ORA contemplates that the rehearing can be a relatively straightforward process involving limited time and resources. The record already contains the parties' testimony (and briefing materials) on the issues that are the subject of the rehearing decision. The Commission should review the existing record and make revised findings based on that record. If San Gabriel has not met its burden of proof on specific projects or issues, the Commission should deny the rate increase associated with that project (as appropriate) or mandate a refund of amounts already collected. No additional testimony from the parties is necessary.

II. SAN GABRIEL'S APPLICATION IS BASED UPON INVALID INFORMATION

ORA protests San Gabriel's current application because it is based on the results of a decision that is subject to substantial modification pursuant to D.05-08-041. Because some of information, assumptions and the resulting rate impacts of San Gabriel's application are no longer correct, San Gabriel's application as filed is based on a substantial amount of erroneous information and assumptions. It should not be considered by the Commission in its current form. The Commission must suspend the rate case plan schedule for this application and require San Gabriel to file a new proposed application once a rehearing issue has been issued.

As the rehearing decision notes, Public Utilities Code ("P.U. Code") § 454 requires a public utility to show that its rate increase request is justified. The utility has the burden of proof to demonstrate the reasonableness of its request. The utility must show by "clear and convincing evidence, the reasonableness of all the expenses it seeks to have reflected in rate adjustments." (D.05-08-041, p. 8, *citing Re Southern California Edison Company* (1983) 11 Cal.P.U.C.2d 474, 475 (D.83-05-036.)) The Commission expects the utility to make "an affirmative showing. . . in support of all elements of its application." (*Id.* p. 9) It is the utility's "direct showing that must provide the clear and convincing evidence" that its rate request is justified, (*Id.* at p. 9, *citing Re Application of Southwestern Gas Corporation* (2004) ___ Cal.P.U.C.2d ___, D.04-03-034, at 6., emphasis added.)

San Gabriel's application does not meet these requirements. Because items such as revenues, ratebase, plant in service, accumulated depreciation, accumulated deferred income taxes, depreciation expense, property taxes, and income taxes are either based on D.04-07-034 or are affected by D.04-07-034, which is now subject to rehearing, San Gabriel's present application is no longer based on accurate numbers and cannot provide clear and convincing evidence in support of its rate increase request.

Once the rehearing is concluded, San Gabriel should file a new PA and the Commission can consider San Gabriel's new rate request. While ORA is prepared to

review a new PA that reflects the results of the rehearing process, no such document exists at this time. Preparation of such an application must necessarily await the completion of the rehearing process, thus ORA sees no reason to devote substantial time and resources to review San Gabriel's 2006 rate case application which must necessarily be substantially revised.

ORA has done some preliminary work in reviewing San Gabriel's application and testimony and has identified numerous issues raised by the application, however, because the application will need to be substantially revised to reflect the rehearing outcome, it is neither prudent nor appropriate to list the issues it raises in detail at this time. Once the rehearing process is complete and San Gabriel has had an opportunity to file a new PA, ORA will be prepared to offer a detailed listing of the issues raised by the revised application.

III. ISSUES RAISED BY THE WATER DIVISION AUDIT REPORT AND THE NEED FOR AN ORDER INSTITUTING INVESTIGATION

In D.04-07-034, the Commission ordered the Water Division staff to perform an audit of San Gabriel's sales and condemnation proceeds. The Commission contemplated that the results of the audit would be addressed in this proceeding as it required that the audit be conducted "prior to Fontana Division's next GRC." On September 8, 2005, the Water Division issued its audit report in compliance with Commission direction.

ORA has conducted a preliminary review of the audit report. This report raises a number of issues regarding San Gabriel's compliance with P.U. Code §790. In addition, the audit report raises concerns about how San Gabriel has used funds it has received from various companies that have contaminated one or more of its sources of water in its Fontana and Los Angeles service districts.

ORA recommends that the Commission issue a companion Order Instituting Investigation ("OII") to address the audit report's findings and to determine if San Gabriel violated any Commission statute and/or rule regarding the conduct discussed in the report. The OII should encompass the issues raised by the audit regarding San

Gabriel's treatment of property and litigation proceeds in both its Los Angeles and Fontana Districts. While ORA recognizes that the Commission recently adjusted San Gabriel's rates for its Los Angeles District, those rates will likely need to be adjusted based on the outcome of the OII. Because the behavior examined in the audit involves both districts, the OII should examine the entire scope of San Gabriel's conduct. Any adjustments to San Gabriel's Los Angeles' District's rates could be made in the Commission's overall order that resolves the OII. For the purposes of judicial economy and consistency in rate treatment, the OII should be consolidated with this proceeding

ORA notes that in energy rate cases, the Commission routinely opens a companion OII with a utility's rate case proceeding. However, in D.04-06-018, the new rate case plan for Class A water companies, the Commission found it was not necessary to open a companion OII for all rate case applications. (D.04-06-018, p. 24.) The Commission observed that it has broad equitable powers to make appropriate orders in furtherance of the public interest and that pursuant to Rule 6.3, the Assigned Commissioner can determine the issues that will be addressed in the proceeding. The Commission stated that in extraordinary circumstances, an OII may be appropriate (*Id.* at 25.)

Given that the Commission felt it necessary to order an audit of San Gabriel in D.04-08-041, and the audit found evidence of questionable behavior, this is one of those extraordinary circumstances. It is appropriate to open an OII in this case to deal with the results of the audit report for both the Fontana and Los Angeles Divisions. Consolidating the OII with this proceeding will ensure that San Gabriel's overall rates are properly adjusted to reflect the results of the rehearing, the OII, and San Gabriel's revised rate case application.

IV. PROPOSED SCHEDULE

Because D.05-08-041 grants rehearing of D.04-07-034 and the rehearing must be decided before the Commission can proceed with San Gabriel's current application, the Commission must suspend the current rate case plan schedule for this application. ORA notes the Commission has scheduled a prehearing conference for September 29, 2005. ORA expects this issue will be discussed at that time. As discussed above, ORA

contemplates the rehearing process will involve a review the existing record to determine what San Gabriel's rates should have been based on its actual submittal (and interveners' testimony) in the last rate case. Once rehearing is concluded, San Gabriel should file a new PA based on the results of the rehearing.

A schedule for the new PA can be determined based upon the rate case plan for Class A water companies. If the Commission grants ORA's request to open a companion OII to address the issues raised in the Water Division's audit, the parties can move forward with the OII while the rehearing issues are being decided.

V. CATEGORIZATION AND NEED FOR HEARINGS

ORA agrees with San Gabriel's proposed categorization of this proceeding as rate setting and agrees that hearings will be necessary to resolve these and other issues raised in San Gabriel's application. Hearings may be necessary to address issues relating to possible violations by San Gabriel of Commission rules and statutes. ORA does not anticipate the need for formal evidentiary hearings on the rehearing issues as the Commission can issue a decision on these based upon the existing record.

VI. CONCLUSION

The Commission must move forward with the rehearing of D.04-07-034 before it can consider any additional rate increase for San Gabriel. Because San Gabriel's application is based upon the results of D.04-07-034 and that decision is now subject to rehearing, San Gabriel's current application is invalid. Once the rehearing is concluded, San Gabriel should file a new proposed application to incorporate the results of the rehearing. A schedule for addressing San Gabriel's new application can be determined at a later time. ORA recommends the Commission issue a companion OII that is consolidated into this proceeding to address the issues contained in the September 8, 2005 Water Division Audit Report regarding both of San Gabriel's Southern California service territories. The OII will also address whether San Gabriel has violated any Commission rules or statutes. The OII can move forward while the rehearing issues are being decided.

Respectfully submitted,

/s/ Monica McCrary

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September 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**PROTEST OF THE OFFICE OF RATEPAYER ADVOCATES**” in A.02-11-044/A.05-08-021 by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on September 14, 2005 at San Francisco, California.

_____/s/ Imelda E. Turbanada

Imelda E. Turbanada

N O T I C E

Parties should notify the Process Office, Public Utilities
Commission, 505 Van Ness Avenue, Room 2000, San
Francisco, CA 94102, of any change of address and/or e-mail
address to insure that they continue to receive documents.
You must indicate the proceeding number on the service list
on which your name appears.
